

**DEPARTMENT OF CORRECTIONS AND REHABILITATION**

**DIVISION OF JUVENILE JUSTICE**

**Title 15, California Code of Regulations**

**Sections 4166, 4168, 4168.5, 4168.7, 4169, 4169.5, 4169.9**

**Sections 4170.5, 4171, 4172, 4173, 4174, 4174.5, 4174.6**

**Acceptance and Rejection Criteria for Youth with**

**Medical or Mental Health Conditions**

**INITIAL STATEMENT OF REASONS/**

The Superior Court of California in *Farrell v. Allen* (now *Cate*), County of Alameda, Case No. RG 03079344, issued a Consent Decree which required California Department of Corrections and Rehabilitation (CDCR) Division of Juvenile Justice (DJJ) to “develop formal criteria for accepting wards into the DJJ pursuant to Welfare and Institutions Code, Section 736 by November, 2004. It further prohibits DJJ from accepting “more wards than can be materially benefited by the DJJ’s rehabilitative and educational discipline” and it prohibits the Division from accepting “youth” for whom the DJJ does not have adequate facilities, programs or staff.”

Section 1712(b) of the Welfare and Institutions Code assigns responsibility to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice to make and enforce all rules appropriate to the proper accomplishment of the functions of the DJJ.

Section 1004 of the Welfare and Institutions Code establishes that the Division of Juvenile Justice (DJJ) shall have charge of the youth committed to or confined in each such institutions, and shall provide for their care, supervision, education, training, employment, discipline, and government.

Section 734 of the Welfare and Institutions Code establishes that no youth of the juvenile court shall be committed to the Division of Juvenile Justice unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the youth are such as to render it probable that he will be benefited by the rehabilitative, educational discipline or other treatment provided by the Division of Juvenile Justice.

Section 736 of the Welfare and Institutions Code establishes that CDCR, Division of Juvenile Facilities (DJF) shall accept a youth committed to it pursuant to this article if the Chief Deputy Secretary for the Division of Juvenile Justice believes that the ward can be materially benefited by the division’s reformatory and educational discipline, and if the division has adequate facilities, staff and programs to provide that care.

### **Specific Purpose and Factual Basis**

On May 10, 2005, Senate Bill (SB) NO. 737 Chapter 10 abolished the Youth and Adult Correctional Agency. SB 737 then created the Department of Corrections and Rehabilitation, consisting of the Division of Adult Operations, the Division of Adult Programs, the Division of Juvenile Justice (DJJ), Corrections Standards of Authority, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry and the Prison Industry Board.

Title 15, Division 4, Chapter 1.6, in its entirety, shall be amended to replace all language that reads California Youth Authority, Youth Authority, Authority and Department shall now read California Department of Corrections & Rehabilitation (CDCR), Division of Juvenile Justice (DJJ) and Division.

Section 224.70(e) of the Welfare and Institutions Code (W&I), states... “A *youth means any person detained in a facility of the Division of Juvenile Justice*”. Per Section 224.70(e) the DJJ will now identify a “ward” as a “youth”.

Current DJJ regulations pertaining to the acceptance/rejection criteria do not address particularly those youth with complex medical conditions, persistent and serious mental health care needs and/or developmental disabilities. They are not consistent with policies the DJJ has implemented in an effort to comply with the court order specified in the *Farrell v. Allen* (now *Cate*) Consent Decree.

DJJ worked with state and local partners to develop a formal acceptance/rejection process to address particularly those youth with complex medical conditions, persistent and serious mental health care needs and/or developmental disabilities who could not materially benefit from a commitment to DJJ and who may not be able to materially benefit from the type of rehabilitative/treatment programs outlined in the Safety and Welfare Code or other remedial plans and who could better be served in alternate programs.

The DJJ acceptance/rejection criteria should be fluid so that they are re-evaluated annually to take into account the progress in implementation of the rehabilitative model and the master plans. Annually, the Chief Deputy Secretary for DJJ and the Director of Mental Health shall confer and establish policy with respect to the types of cases that should be the responsibility of The California Department of Corrections and Rehabilitation, Division of Juvenile Justice and the State Department of Mental Health.

For those youth who are accepted, DJJ will physically admit only those new commitments who arrive with required documentation and thorough review and assessment of their significant mental health problems, medical conditions, developmental disabilities, and/or sexually violent offenses.

These regulatory amendments are intended to realign the regulations with policies the DJJ has implemented in order to comply with the Courts’ orders.

ISOR- Division of Juvenile Justice

Title 15, Division 4, Chapter 1.6, does not address the requirement that California Department of Corrections and Rehabilitation, Division of Juvenile Justice shall have written criteria to accept or reject youths with complex medical conditions, persistent and serious mental health care needs and/or developmental disabilities. The proposed regulation will create and establish standards and criteria for the acceptance or rejection of youth referred to Division of Juvenile Facilities, Intake Unit. They will review the completed DJJ Referral Document DJJ 1.411 (Revised 12/07) and the Mental Health Assessment DJJ 1.205 (Revised 9/08) (forms supplied to counties by the Division) for each case referred to DJJ from the counties and will make a decision to accept or reject a youth.

**In Chapter 1.6 The underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Subsection 4166. General Standards and Premises. The underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Subsection 4166 (a). General Standards & Premises: ~~Reserved~~ Subsection 4166 (b) (~~Reserved~~) new text for subsection 4166 (b) is adopted to reflect the material benefit requirements are met.**

**Subsection 4166 (c), (d), (e), the underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**New Subsection 4166 (f) is new text has been adopted to ensure that youth are sent to the proper responsible agency where the youth will materially benefit from their programs. This should be discussed annually between the Director of Dept. of Mental Health and the Chief Deputy Secretary of CDCR, Division of Juvenile Justice.**

**Subsection 4168, 4168 (a)(1)(2), (b)(1)(2)(3)(4), the underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Existing Subsection 4168.5 (a) and (b) is renumbered 4168.5 (a)  
The underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Existing subsection 4168.5 (b) (1)(A) (B) (C) (D) (E) (F) (2) (3) (4) is renumbered 4168.5 (b) (1) (A) (B) (C) (D) (E) (F) (2) (3) (4) (5) respectively and are amended. The underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Subsection 4168.5 (F) (2) is amended to include the revision date for Referral Document, Form DJJ 1.411 (Rev. 12/07).**

**Subsection 4168.5 (F) (3) is added to include Mental Health Assessment Form, DJJ 1.205 (Rev. 9/08) that should accompany all mental health referrals to DJJ from the County Probation.**

**Subsection 4168.5 (6)** is added to include that Pursuant to Welfare and Institutions Code 1742, when the juvenile court commits a youth to the Division of Juvenile Justice who is identified as an individual with exceptional needs, as defined by Section 56026 of the Education Code, the juvenile court shall not order the juvenile conveyed to the physical custody of the Division until the youth's previously developed individualized education program previously developed has been furnished to the Division.

**Additionally, a second paragraph is added which will read:** In order to enforce this requirement, the court shall indicate on the court commitment documents whether:

- The youth is an individual with exceptional needs; the youth is not an individual with exceptional needs; or education records do not indicate that a determination has been made regarding any exceptional needs the youth may have

**Subsection 4168.7** is adopted to include Acceptance and Rejection Criteria for Youth with Medical or Mental Health Conditions. Pursuant to Welfare and Institutions Code 736, DJJ shall only accept youth who can materially benefit from the reformatory and educational discipline provided by DJJ. Youth with medical or mental health conditions which are sufficiently severe to interfere with the youths' ability to materially benefit from DJJ programs are not appropriate for acceptance. Previously DJJ did not have any written criteria to guide the acceptance or rejection decisions for youth with these conditions.

**Subsection 4169.** The underline indicates additional text and ~~strikethrough~~ indicates deleted text.

**Subsection 4169.5** The following underline indicates additional text and ~~strikethrough~~ indicates deleted text.

**Subsection 4169.9** The following underline indicates additional text and ~~strikethrough~~ indicates deleted text.

**Subsection 4170.5.** The following, underline indicates additional text was added, and ~~strikethrough~~ indicates additional deleted text. The previously used text was deleted because Sections 1736 and 736 (a) and (b) of the Welfare and Institutions Code has been changed and the text never should have been used as it is the actual verbatim text in this regulation.

New text was adopted to state that DJJ may accept, at its discretion, Juvenile Court Commitments that can materially benefit by its rehabilitative and treatment programs. The Chief Deputy Secretary shall certify that staff and institutions are available (a) if he is a borderline psychiatric or borderline mentally deficient case and (b) if he suffers from a primary behavior disorder. DJJ is prohibited from accepting more youths than can be materially benefited by its rehabilitative and educational discipline.

New authorities for this section are adopted as a result of the reasons stated above.

**Subsection 4171.** The following underline indicates additional text and ~~strikethrough~~ indicates deleted text. Subsection 4171 (a) programs, staff and rehabilitative was added to clarify the fact that DJJ shall have the programs, staff and rehabilitative services necessary to materially benefit youth committed to it.

**New Subsection 4171.5** is adopted to include Acceptance and Rejection Criteria for Youth with Medical or Mental Health Conditions. Pursuant to Welfare and Institutions Code 736, DJJ shall only accept youth who can materially benefit from the reformatory and educational discipline provided by DJJ. Youth with medical or mental health conditions which are sufficiently severe to interfere with the youths' ability to materially benefit from DJJ programs are not appropriate for acceptance. Previously DJJ did not have any written criteria to guide the acceptance decisions for youth with these conditions.

**Subsection 4172 is repealed as** Section 736 (b) of the Welfare and Institutions Code has been changed to allow the Chief Deputy Secretary of DJJ and the Director of the State Department of Mental Health to meet, at least annually, the confer and establish policy with respect to the types of cases that should be the responsibility of each department.

**Subsection 4173 is added** to include the requirement that Pursuant to Welfare and Institutions Code 1742, when the juvenile court commits a youth to the Division of Juvenile Justice who is identified as an individual with exceptional needs, as defined by Section 56026 of the Education Code, the juvenile court shall not order the juvenile conveyed to the physical custody o the Division until the youth's previously developed individualized education program previously developed has been furnished to the Division.

**Additionally, a second paragraph is added which will read:** In order to enforce this requirement, the court shall indicate on the court commitment documents whether:

- The youth is an individual with exceptional needs; the youth is not an individual with exceptional needs; or education records do not indicate that a determination has been made regarding any exceptional needs the youth may have.

**Subsection 4173 (c) is relocated to subsection 4173 (b) and the underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Subsection 4174** The underline indicates additional text and ~~strikethrough~~ indicates deleted text.

**Reserved Subsection 4174.5 (a) and (b) are deleted and text from 4174.5 (c) is relocated to (a). The underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

**Subsection 4174.6. The underline indicates additional text and ~~strikethrough~~ indicates deleted text.**

### **REASONABLE ALTERNATIVES**

No other alternatives have been considered by the DJJ.

### **REASONABLE ALTERNATIVES HAVING A SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

The DJJ has not identified any alternatives that would lessen any adverse impact on small businesses.

### **IDENTIFICATION OF STUDY, REPORT, OR DOCUMENT RELIED UPON**

November 2004, Superior Court of California, Farrell v. Cate, County of Alameda, Case No. RG 03079344, Consent Decree.